

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DORCAS GITHINJI and JASON SHRIVER, a
marital community,

Plaintiffs,

vs.

TIFFANY COATES, THOMAS MILAVEC,
NICHOLAS SMITH, AND COREY JOHNSON,

Defendants.

NO. 3:22-cv-05138-MJP

~~(PROPOSED)~~ AGREED
PRETRIAL ORDER

I. JURISDICTION

Jurisdiction is vested in this court by virtue of 28 U.S.C. §1332 this being a civil rights case pursuant to 42 U.S.C. §1983. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

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II. ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiff Jason Shriver called 911 on January 26, 2020 about his wife.
2. Olympia police officers responded to the call at Plaintiffs' residence. Olympia Police Officer Tiffany Coates and Officer Nicholas Smith arrived first and knocked on the front door of Shriver's house.
3. Officer Nicholas Smith claims that he witnessed Plaintiff Jason Shriver assault and imprison Plaintiff Dorcas Githinji during the interaction with the Plaintiffs.
4. Dorcas Githinji did come outside to speak with the Officers.
5. Officer Smith called Judge Brett Buckley seeking a search warrant.
6. Videos taken by Jason Shriver's front door camera depict at least part of the relevant events of January 26-27, 2020.

III. CLAIMS AND DEFENSES

The Plaintiffs will pursue at trial the following claims:

1. Both Plaintiffs seek relief against only Defendant Nicholas Smith pursuant to 42 U.S.C § 1983 for damages caused by the violation of rights protected by the Fourth Amendment of the United States Constitution.
2. Both Plaintiffs seek relief for damages caused by the negligence of Defendant Nicholas Smith.
3. Both Plaintiffs seek relief for loss of consortium caused by Defendants Nicholas Smith, Thomas Milavec, Corey Johnson, and Tiffany Coates.
4. Both Plaintiffs seek relief for false arrest against Defendants Nicholas Smith, Thomas Milavec, and Corey Johnson.

Defendants intend to pursue the following affirmative defenses:

1. That qualified immunity under state and federal law precludes plaintiffs' claims.

2. That the public duty doctrine and qualified and/or good faith immunity preclude plaintiffs' state law claims.

3. That the plaintiffs' comparative fault proximately caused their damages, if any.

4. That the plaintiffs failed to mitigate their damages, if any.

5. That plaintiff was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury.

Therefore, Plaintiffs' claims are barred by RCW 5.40.060.

6. That the defendants are entitled to immunity under RCW 10.99.070.

IV. ISSUES OF LAW

The following are Plaintiff's issues of law to be determined by the court:

1. Decisions on perpetuation testimony objections;
2. Decisions on jury instructions;
3. Admissibility of evidence;
4. Should the jury be instructed on punitive damages?
5. Are the Officers entitled to qualified immunity based on the Jury's factual determination of whether Mr. Shriver committed a crime?

V. EXPERT WITNESSES

(a) Each party shall be limited to one (1) expert witness on the issue of damages.

(b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify are:

(1) On behalf of Plaintiff:

Kenneth Muscatel, Ph.D., 411 12th Avenue, Suite 305, Seattle, WA 98122-5523.

Dr. Muscatel will opine that Jason Shriver and Dorcas Githinji sustained psychological trauma during and as a result of Defendant's actions on January 26-27. Dr. Muscatel will opine that, as a result of the incident, on a more-probable-than-not basis, Jason Shriver suffers ongoing emotional distress and

1 symptoms of post-traumatic stress disorder. Dr. Muscatel will opine that, as a result of the incident, on a
 2 more-probable-than-not basis, Dorcas Githinji suffers ongoing emotional distress. Will Testify.

4 5 **VI. OTHER WITNESSES**

6 The names and addresses of witnesses, other than experts, to be used by each party at the time of trial
 7 and the general nature of the testimony of each are:

8 (a) On behalf of Plaintiff:

9 **a. Will Testify:**

- 10 1. Dorcas Githinji Shriver (Shiku), c/o Albert Law PLLC, 3131 Western Ave Ste 410,
 11 Seattle, WA 98121. Plaintiff has information regarding the arrest of Jason Shriver and
 12 Dorcas Githinji. Will Testify.
- 13 2. Jason Shriver (Jake), c/o Albert Law PLLC, 3131 Western Ave Ste 410, Seattle, WA
 14 98121. Plaintiff has information regarding the arrest of Jason Shriver and Dorcas Githinji.
 15 Will Testify.
- 16 3. Thomas Keehan, 1800 Cooper Point Rd S.W., Ste. 12, Olympia, WA 98502. Witness has
 17 information regarding the arrest of Jason Shriver and associated charges. Will Testify.
- 18 4. Ash Patel, MD, 3101 Northup Way Suite 201, Bellevue, WA 98004-1449. Witness has
 19 knowledge regarding Jake Shriver's medical treatment. Will Testify.
- 20 5. Jared McWhiney, PT, DPT, 732 Highway 270 E, Mount Ida, AR 71957. Witness has
 21 knowledge regarding Jake Shriver's medical status. Will testify.
- 22 6. Defendant Nicholas Smith, c/o Law, Lyman, Daniel, Kammerer and Bogdonavich, P.S.,
 23 2674 R.W. Johnson Rd., Tumwater, WA 98512. Defendant has information regarding the
 24 arrest of Jason Shriver and Dorcas Githinji. Will Testify.
- 25 7. Defendant Thomas Milavec, c/o Law, Lyman, Daniel, Kammerer and Bogdonavich, P.S.,
 26 2674 R.W. Johnson Rd., Tumwater, WA 98512. Defendant has information regarding the
 arrest of Jason Shriver and Dorcas Githinji. Will Testify.

1 8. Defendant Tiffany Coates, c/o Law, Lyman, Daniel, Kammerer and Bogdonavich, P.S.,
2 2674 R.W. Johnson Rd., Tumwater, WA 98512. Defendant has information regarding the
3 arrest of Jason Shriver and Dorcas Githinji. Will Testify.
4

5 **b. Possible Witness Only:**

6 9. Travis Kuhns, Thurston County Prosecuting Attorneys Office, 2000 Lakeridge Dr. SW,
7 Olympia, WA 98502. Witness has information regarding charges filed against Jason
8 Shriver. Possible Witness Only.

9 10. Glenn Larson, 11345 Entree View Dr SW, Olympia, WA 98512-9018. Witness has
10 information regarding the events of January 26, 2024. Possible Witness Only.

11 11. Defendant Corey Johnson, c/o Law, Lyman, Daniel, Kammerer and Bogdonavich, P.S.,
12 2674 R.W. Johnson Rd., Tumwater, WA 98512. Defendant has information regarding the
13 arrest of Jason Shriver and Dorcas Githinji. Possible Witness Only.
14

15 **(b) On behalf of Defendant:**

16 A. Officer Tiffany Coates
17 601 4th Avenue East, Olympia, WA 98501

18 Officer Coates will testify concerning her actions related to the incidents referenced in the
19 complaint. Will Testify.

20 B. Sgt. Corey Johnson
21 601 4th Avenue East, Olympia, WA 98501

22 Sgt. Johnson will testify concerning his actions related to the incidents referred to in the
23 complaint. Will Testify.

24 C. Officer Thomas Milavec
25 601 4th Avenue East, Olympia, WA 98501

26 Officer Milavec will testify concerning his actions related to the incidents referenced in the
complaint. Will Testify.

D. Officer Nicholas Smith
601 4th Avenue East, Olympia, WA 98501

1 Officer Smith will testify concerning his actions related to the incidents referenced in the
2 complaint. Will Testify.

3 E. Brad Watkins, Chief
4 Thurston County Sheriff's Office
5 2000 Lakeridge DR SW
6 Olympia, WA 98502

7 Mr. Watkins will testify concerning the SWAT operation at plaintiffs' residence. Possible
8 Witness Only.

9 F. Ruben Mancillas
10 Thurston County Sheriff's Office
11 2000 Lakeridge DR SW
12 Olympia, WA 98502

13 Mr. Watkins will testify concerning the SWAT operation at plaintiffs' residence. Possible
14 Witness Only.

15 G. Dr. Dan Gilday
16 413 Lilly Rd NE
17 Olympia, WA 98506

18 Dr. Gilday will testify concerning his examination of Jason Shriver following his arrest. Possible
19 Witness Only.

20 H. Jason Shriver
21 c/o Plaintiff's counsel

22 Mr. Shriver will testify concerning his conduct on the January 26, 2020 and regarding other
23 incidents identified in defendants' motions in limine. Will testify.

24 I. Dorcas Githinji
25 c/o Plaintiffs' counsel.

26 Ms. Githinji will testify concerning the events of January 26, 2020 and regarding other incidents
identified in defendants' motions in limine, including her 911 call on 11/27/2021. Will testify.

J. Sean Kitely
3026 SW Avalon WA
Seattle, WA 98126

Mr. Kitely will testify concerning an assault by plaintiff Shriver on May 12, 2017. Possible
Witness Only.

K. Sgt. Matthew Renschler

601 4th Avenue East, Olympia, WA 98501

Sgt. Renschler will testify concerning an event on November 6, 2017 in which plaintiff Shriver caused a disturbance in Court while intoxicated. Possible Witness Only.

L. Bellevue Police Officer Jennifer Hansen
450 110th Avenue NE
Bellevue, WA 98004

Officer Hansen will testify concerning an arrest of plaintiff Shriver on 6/16/2022. Possible Witness Only.

Plaintiffs and Defendants reserve the right to call rebuttal witnesses, witnesses listed in initial disclosures, supplemental initial disclosures, and any witnesses on plaintiff's and defendants' witness list.

VII. EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag.

Ex. No.	Document Description	Authenticity Stipulated	Admiss. disputed	Objection	Admitted
P-1	Transcript of Telephonic Search Warrant		X	801; F	
P-2	Audio of Search Warrant Application		X	801; F	
P-3	Search Warrant		X	801	
P-4	Search Warrant Return of Officer, Inventory, and Receipt of Property		X	801; I	
P-5	Police Report		X	801	
P-6	Videos 1-4	X			

1	P-7	No Exhibit				
2	P-8	No Exhibit				
3	P-9	No Contact Order		X	801; I; MIL	
4	P-10	Release of No Contact Order		X	801; I; MIL	
5	P-11	Medical Records Olympia Orthopaedic Associates			F; MIL; I; 801	
6						
7	P-12	Billing Records Olympia Orthopaedic Associates			F; MIL; I; 801	
8						
9						
10	P-13	Medical Records Proliance Orthopaedics and Sports Medicine – Redmond			F; MIL; I; 801	
11						
12						
13						
14	P-14	Billing Records Proliance Orthopaedics and Sports Medicine – Redmond			F; MIL; I; 801	
15						
16						
17						
18	P-15	Medical Records The Joint Chiropractic			F; MIL; I; 801	
19						
20						
21	P-16	Billing Records The Joint Chiropractic			F; MIL; I; 801	
22						
23	P-17	Information – Charging Document		X	801; F	
24						
25	P-18	911 Call Audio Recording	X			
26						

AGREED PRETRIAL ORDER – 8

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1	P-19	January 27, 2020 OPD Daily Briefing Report Excerpt		X	F; I; 801	
2						
3	P-20	Photo of Shoulder X- Ray			F, MIL, I; 801	
4						
5	P-21	February 18, 2020 Brady Memo			F, MIL, I; 801	
6						
7	P-22	Nicole Glenn Supplemental Police Report		X	801	
8						
9	P-23	Kimberly Manning Supplemental Police Report		X	801	
10						
11	P-24	Declaration of Prosecutor Supporting Probable Cause		X	801	
12						
13						
14	P-25	March 18, 2020 Email Chain		X	H, I, F	
15						
16	D-100	911 Call – Audio Recording of Jason Shriver	X			
17						
18	D-101	Video 1 Porch Cam	X			
19	D-102	Video 2 Porch Cam	X			
20						
21	D-103	Video 4 Porch Cam		X	I	
22	D-104	Video 5 Porch Cam			MIL	
23	D-105	PTSD Criteria – DSM 5		X	I, E, F	
24	D-106	Call for Service Detail Report 11/27/2021		X	I, F	
25						
26	D-107	Gilday Report		X	I	

The Parties Objection Code:

E Exhibit is objectional because it constitutes attempted expert testimony from a person who was not designated as an expert (Fed. R. Civ. P. 26)

F Lack of Foundation

MIL Subject of Motion in Limine

H Hearsay (Fed. R. Evid. 801)

I Irrelevant (Fed. R. Evid. 402)

(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only.)

ORDER OF THE COURT

(a) Trial briefs have been submitted

(b) Jury instructions by the parties have been submitted..

(c) The pretrial conferences were held on April 30, 2024 at 1:30 p.m. and June 4, 2024 at 9:30 a.m.

(d) The Court has dismissed the loss of consortium claim brought against Tiffany Coates for the reasons explained during the pretrial conferences, particularly because Plaintiffs have no other claims asserted against Coates that would demonstrate she engaged in any “wrongful” conduct necessary to sustain a loss of consortium claim.

(e) This case is scheduled for trial before a jury on June 25, 2024 at 9:00 a.m.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

Dated: June 4, 2024



Marsha J. Pechman
United States Senior District Judge

1 Presented by the Parties dated this 25th day of May, 2024.

2
3 By: /s/ Gregory W. Albert

Gregory W. Albert, WSBA 42673

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7
8 /s/ John E. Justice

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